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January 24, 2021

BY ELECTRONIC FILING

Honorable Ann M. Donnelly
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United States v. Robert Kelly, Case No. 19-286 (S-1) (AMD)*

Dear Judge Donnelly:

We respectfully submit this letter on Mr. Kelly's behalf, as a *Motion to Compel*, seeking this Court to immediately require the Government to produce discovery materials to Mr. Kelly and his counsel, including but not limited to 3500 and *Giglio* materials.

In short, this Court urged the Government - during at least one of the parties' status hearings - to both cooperate with defense counsel and to produce all discovery materials sufficiently in advance of trial to allow Mr. Kelly and his counsel an adequate opportunity to prepare for trial, and to avoid needless delays in the trial, and/or the continuance of the trial. It was Mr. Kelly's counsel's understanding that the Government would produce all such materials 90 days prior to trial. That time has come and gone.

There is simply no reason for the Government to continue to withhold these important discovery materials, which are undeniably crucial to Mr. Kelly and his counsel's trial preparation - and to Mr. Kelly's defense and Constitutional rights. Moreover, the Government possesses the materials, and has the ability to produce them immediately. The only reason that these materials are being withheld is to allow the Government to gain a tactical advantage and as gamesmanship. This action is decidedly not one that should be based upon trial by surprise, or trial with only an opportunity for one side to meaningfully prepare. All of this might be different if the Government had not already had all, or the bulk of, these materials in its possession for years – or at least many months.

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The pandemic will make it even more difficult for Mr. Kelly's counsel to take investigatory and other steps, once they finally receive these materials. That is exacerbated by the fact that the allegations in this case stem from events that are allegedly to have occurred literally decades ago. And by the fact that, at some point, Mr. Kelly will be inaccessible while he is being relocated to Brooklyn for trial. The notion that the Government would ever agree to, or be forced to, proceed to trial under these circumstances is absurd.

In any event, to-date, the Government has only offered to produce the "first" batch or phase of these discovery materials, but only to produce those materials on February 5. The Government has not offered any explanation whatsoever as to why *all* of these materials cannot be produced immediately. Nor has the Government offered any timeline for the production of the additional materials.

Mr. Kelly's counsel has attempted, by way of e-mails and otherwise, to meet and confer with the Government to amicably resolve these issues, to no avail. However, a partial and non-quantified production of some of the discovery materials, approximately two weeks from now, will not resolve these issues.

For all of those reasons, this Court should grant this Motion to Compel, and Order the Government to immediately produce all discovery materials to Mr. Kelly's counsel, and for such other and further relief as is appropriate under the circumstances.

Sincerely,



Michael I. Leonard

MIL:bp

cc: All Counsel of Record (via ECF filing)